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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TERESA LANDUCCI, on behalf of herself
and others similarly situated,

Plaintiff,

v.

FREEMAN EXPOSITIONS, LLC and DOES
1 to 100, inclusive,

Defendants.

Case No. 3:19-cv-07573-JCS

CLASS AND COLLECTIVE ACTION

**NOTICE AND UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Date: February 4, 2022
Time: 9:30 a.m.
Courtroom: Courtroom F – 15th Floor
Judge: Chief Magistrate Judge
Joseph C. Spero

Second Amended Complaint Filed:
November 2, 2020

TO ALL PARTIES AND ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on Friday, February 4, 2022, at 9:30 a.m. in Courtroom F before Chief Magistrate Judge Joseph C. Spero of the United States District Court, Northern District of California, Plaintiff TERESA LANDUCCI moves the Court for preliminary approval of the Joint Stipulation of Class and Representative Action Settlement (the “Settlement Agreement” or the “Settlement,” attached as Exhibit 1 to the Declaration of Ryan L. Hicks (“Hicks Dec.”), filed concurrently herewith). In particular, Plaintiff moves for orders:

(1) granting preliminary approval of the Settlement Agreement as to the proposed settlement Class;

- (2) conditionally certifying the Class for settlement purposes;
- (3) approving the proposed schedule and procedure for completing the final approval process of the settlement as to the Class, including scheduling the final fairness hearing date;
- (4) approving the Notices of Proposed Class Action Settlement ("Class Notice") (attached as Exhibits A1 and A2 to the Settlement Agreement), and the PAGA Settlement Cover Letter (attached as Exhibit C to the Settlement Agreement);
- (5) preliminarily appointing and approving Hoyer & Hicks as Counsel for the Class;
- (6) preliminarily approving Class Counsel's request for attorneys' fees and costs;
- (7) preliminarily appointing and approving the named Plaintiff as Class Representative;
- (8) preliminarily appointing and approving Simpluris, Inc. as the Settlement Administrator for the Class; and
- (9) authorizing the Settlement Administrator to mail the approved Class Notice to the Class.

This Motion is based on this notice, the following attached Memorandum of Points and Authorities, the Declaration of Ryan L. Hicks, and all other records, pleadings, and papers on file in this action and such other evidence or argument as may be presented to the Court at the hearing on this Motion. Accompanying this Motion is also Plaintiff's Proposed Order Granting Preliminary Approval of Settlement.

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1 **I. INTRODUCTION**

2 This is a class action on behalf of all current and former non-exempt employees of
3 Defendant FREEMAN EXPOSITIONS, LLC, (“Defendant” or “Freeman”) who received paper
4 paychecks and against whom third-party Bank of America assessed check cashing fees
5 when those employees cashed those paychecks in California during the Class Period.
6 Plaintiff also asserts a collective claim for PAGA Penalties on behalf of the Labor Workforce
7 and Development Agencies related to violations suffered by the Aggrieved Employees, all
8 non-exempt employees of Defendant who received paper paychecks during the PAGA
9 Period. Following informal discovery, including lengthy negotiations with third-party Bank of
10 America, which assessed the fees, an unsuccessful mediation, and extensive arm’s-length
11 negotiations between counsel thereafter, the Parties have reached a settlement of this
12 dispute. Plaintiff seeks preliminary approval of the proposed Class Settlement. The Parties
13 are resolving class claims and a PAGA claim unlikely to have been prosecuted as individual
14 actions or by the State, and in doing so provide substantial benefit to the Class. Specifically,
15 the Parties have resolved the claims of approximately 1,015 class members and a PAGA
16 claim involving approximately 5,547 aggrieved employees, for a total settlement of
17 \$500,000.¹ This favorable Settlement is fair, reasonable, and adequate in all respects.

18 **II. FACTUAL BACKGROUND**

19 Defendant is a nationwide trade show, exhibit, and event company based in Dallas,
20 TX. Plaintiff and the Class Members (collectively, “CMs”) are former and current non-exempt
21 employees who worked in California during the applicable limitations period, and against
22 whom check cashing fees of \$5 or \$8 were assessed when the CM attempted to cash a paper
23 paycheck. Plaintiff alleges that the check cashing fees violate the Labor Code and also give
24 rise to Waiting Time Penalties. On behalf of the State, Plaintiff also asserts a claim for PAGA
25 Penalties on behalf of all employees who were issued physical paychecks as check cashing
26

27
28

¹ The Settlement Agreement (“Settlement”) is attached as Exhibit 1 to the Declaration of Ryan L. Hicks ISO
Preliminary Approval (“Hicks Dec.”).

1 fees could have been assessed when the PAGA Member cashed the check. Defendant has
2 at all times denied these allegations.

3 **III. PROCEDURAL HISTORY**

4 **A. Plaintiff's Claims**

5 On November 18, 2019, Plaintiff filed a complaint alleging class wage and hour
6 violations² in the United States District Court for the Northern District of California (Dkt. # 1).
7 That same day, Plaintiff submitted a PAGA notice to the Labor and Workforce Development
8 Agency ("LWDA"). (Hicks Dec. at ¶ 3). On January 16, 2020, Plaintiff filed her First Amended
9 Complaint. (Dkt. # 16). With the Court's permission, Plaintiff filed the operative Second
10 Amended Complaint on November 2, 2020 (Dkt. # 46). The parties exchanged their initial
11 disclosures, and Plaintiff propounded a full set of discovery requests, and Defendant took
12 Plaintiff's deposition. (Hicks Dec. at ¶ 3). Ultimately, the Parties agreed to mediate the case.
13 *Id.* at ¶¶ 3-4. In addition to the informal discovery, Plaintiff issued a PMK subpoena to third-
14 party Bank of America ("BOFA"), the bank through which the paychecks to CMs and PAGA
15 Members were issued, and which charged the check cashing fees at issue in the case, to
16 identify and ascertain the check cashing fees assessed against CMs during the class period.
17 *Id.* at ¶ 5. The Parties worked for many months thereafter with BOFA to determine the extent
18 of the check cashing fees. *Id.* The Parties agreed to stay all formal proceedings pending the
19 mediation. *Id.*

20 In addition to the extensive pre-certification, voluntary exchange of information, the
21 Parties each conducted independent investigations and fact-finding. *Id.* at ¶ 6. Plaintiff's
22 counsel interviewed some CMs, none of whom were willing to provide written statements or
23 declarations. *Id.* at ¶ 6.

24 On June 22, 2021, the Parties participated in an exhaustive full-day mediation session
25 via Zoom before Deborah Crandall Saxe, Esq., a highly respected neutral mediator out of the
26 Los Angeles area, who specializes in wage and hour mediations. *Id.* at ¶ 7. Plaintiff submitted

27 ² Plaintiff also asserted individual claims of sex discrimination, sexual harassment, and retaliation in violation of
28 the Fair Employment and Housing Act and Labor Code § 1102.5. The individual claims were the subject of a
separate settlement agreement.

1 a mediation brief summarizing the evidence that counsel had marshalled and synthesized,
2 the state of the applicable law, and potential individual and class-wide exposure. *Id.*
3 Defendant submitted its own brief arguing that no class could be certified and that they would
4 also prevail on the merits against the individual Plaintiff and any other PCMs. *Id.* Although
5 resolution was not achieved at the June 22 session, with Mediator Saxe's assistance
6 thereafter, the Parties agreed, subject to approval by this Court, to a Settlement of the
7 Actions.³ *Id.* The Parties executed the Settlement Agreement on December 16, 2021. *Id.*; Ex.
8 1.

9 The November 2, 2020 operative Complaint asserts three causes of action on behalf
10 of the class for (1) unlawfully withheld wages resulting from the check cashing fees in violation
11 of California Labor Code § 212; (2) resulting Waiting Time Penalties; and (3) unfair business
12 practices in violation of the Unfair Competition Law, Bus. and Profs. Code §§ 17200, *et seq.*
13 ("UCL"). Plaintiff also asserts a claim for PAGA Penalties on behalf of the LWDA for violations
14 of Labor Code § 212. The remaining causes of action were asserted on an individual basis
15 by Plaintiff and have been resolved. (Dtk. # 46).

16 **B. Discovery**

17 As a condition of the mediation, Plaintiff required Defendant to provide some informal
18 discovery regarding the number of total paper paychecks issued during the PAGA Period.
19 The parties also determined that the most vital piece of information was the check cashing
20 fees provided by BOFA from its own information systems. Hicks Dec. at ¶¶ 4, 10, 30.
21 Plaintiff's counsel then calculated the damages for the class based on the data provided by
22 Defendant and BOFA. *Id.* at ¶¶ 10, 11. Class Counsel also made a thorough study of the
23 legal principles applicable to the claims asserted against Defendant. *Id.*

24 **C. Damages Analysis**

25 Class Counsel based their damages analysis and settlement negotiations on the
26 informal discovery and data provided and the information obtained from BOFA and
27

28 ³ As discussed above, the individual claims were resolved in a separate agreement after the class and
representative claims were resolved in principle. Hicks Dec. at ¶ 8.

1 Defendant prior to the mediation. *Id.* at ¶ 10. Because of the data production, and the simple
2 nature of the claim (either a fee was assessed by BOFA to a CM, or it was not), Plaintiff's
3 Counsel was required to make only a few assumptions regarding the exposure. *Id.*

4 Using these assumptions and further assuming that Plaintiff and the CMs would certify
5 all of their claims and prevail at trial on all claims for the absolute maximum "perfect world"
6 exposure, Plaintiff's Counsel calculated total damages, including all penalties, through the
7 mediation⁴ to be \$9,626,919 for the class claims (the actual fees charged to CMs were
8 approximately \$31,000, and the rest of the damages were for Waiting Time Penalties), and
9 approximately \$3,484,652 for the PAGA claim. *Id.* at ¶ 11.

10 The net amount being disbursed to CMs, assuming the Court approves all deductions,
11 is \$221,500, which is approximately 2% of the total non-PAGA damages and penalties
12 estimated by Plaintiff (all but \$30,759 is attributable to waiting time penalties claims), but is
13 notably over 720% of the \$30,759.00 in check cashing fees that were actually assessed
14 against the class members. *Id.* at ¶ 12; Ex. 2 (BOFA Declaration re: Fees Assessed). The
15 settlement amount is fair, reasonable, and adequate. *Id.* at ¶ 21. The settlement amount
16 takes into account the substantial risks inherent in any wage-and-hour class action, the status
17 of the litigation, the evidence that Defendant discussed at the mediation, and the specific
18 defenses as to certification and on the merits asserted by Defendant. *Id.* at ¶¶ 27, 28.

19 **D. Mediation**

20 The Parties mediated this dispute on June 22, 2021 before Deborah Crandall Saxe,
21 Esq., a respected and experienced wage and hour mediator, engaging in arm's-length
22 negotiations, and the Parties only reached a settlement after negotiations continued for
23 months after the unsuccessful mediation. *Id.* at ¶¶ 7, 14. Thereafter, counsel for the Parties
24 worked to finalize the settlement for the CMs and the proposed class notice, subject to the
25 Court's approval. *Id.* The Settlement Agreement was fully executed on December 16, 2021.
26 *Id.*; Ex. 1.

27
28 ⁴ The information regarding the total amount of check cashing fees assessed was updated following the
mediation prior to the execution of the Settlement Agreement *Id.* at ¶ 9.

IV. TERMS OF THE SETTLEMENT

A. Basic Terms

Defendants have agreed to pay a total of \$500,000 to settle all aspects of the class and collective claims. Settlement at ¶ 16 (Gross Settlement Amount). The “Total Net Settlement Amount,” which is the amount available to pay settlement awards to the CMs, is defined as the Settlement Fund less: any attorneys’ fees and costs awarded to Class Counsel (fees of up to one-third of the Maximum Settlement Amount, \$166,666.67, plus actual reasonable costs incurred (currently estimated as \$10,000 and will be updated at Final Approval), any enhancement payment awarded to the Class Representative (up to \$10,000), the payment made to the California Labor & Workforce Development Agency (“LWDA”) pursuant to PAGA (\$56,250)⁵, the amount to be disbursed to the PAGA Members (\$18,750)⁶, and the Settlement Administrator’s fees and costs (which have been quoted at \$18,000⁷). *Id.*

B. Class Definition

An individual is a member of the proposed settlement Class if they received a physical paycheck in California and were assessed a check cashing fee by BOFA when attempting to cash the paycheck from Defendant at any time during the period from November 18, 2015 through the end of the Class Period, which is the date of preliminary approval of the Settlement. Settlement at ¶¶ 5 (Class Members), 6 (Class Period).

C. Allocation and Awards

The Total Net Settlement Fund to be paid to CMs is estimated to be \$221,500. Hicks Dec. at ¶ 18. All CMs who do not opt-out of the Settlement will receive a payment. Each CM’s settlement share will be determined by dividing the Total Net Settlement Fund Equally among Class Members, as the lion’s share of the damages are based on the alleged Waiting Time Penalties claims, which are far larger per class member than any number of individual check

⁵ Plaintiff will submit a copy of the Settlement Agreement and these papers to the LWDA, per Cal. Lab. Code §2699(l)(2). Hicks Dec. at ¶ 16, fn. 3. \$75,000 of this Settlement is allocated to settle the PAGA claims. *Id.* The Settlement Administrator shall pay \$56,250 of this amount to the LWDA, and allocate the remaining 25% to the payments to PAGA Members. Settlement ¶ 19 (LWDA Payment), 7 (PAGA Members).

⁶ Settlement Agreement at ¶ 42.

⁷ The Simpluris’ quote is attached to the Hicks Dec. at ¶ 20; Ex. 3.

1 cashing fees assessed. Settlement at ¶ 44(a).⁸ All eligibility and Class Settlement Award
2 determinations shall be based on employee information that the Settlement Administrator
3 determines based on Defendant's data provided to the Settlement Administrator and check
4 cashing fee data provided by BOFA. *Id.* at ¶¶ 4, 34-35. For any CM that does not timely opt
5 out of the Settlement and receives a payment, but does not timely cash his or her settlement
6 check within 90 days, the Settlement Administrator will immediately stop payment on the
7 check and such funds, plus any accrued interest, will be tendered to a *cy pres* beneficiary to
8 be approved by the Court.⁹

9 **D. Scope of Release and Final Judgment**

10 The release contemplated by the proposed Settlement will release all claims in
11 connection with the lawsuit, all violations asserted in any notice sent to the LWDA, as well as
12 all predicate claims based on the factual and legal theories alleged based on the facts alleged
13 in the complaint (i.e. based on violations of 212 and associated check cashing fees and
14 resulting waiting time penalties), from the beginning of any applicable statute of limitations
15 period through the end of the Class Period. Settlement at ¶¶ 25; 42. Only CMs who do not
16 opt out will release their Class Claims, however, all claims under PAGA regarding alleged
17 violations allegedly suffered by PAGA Members will be released by the LWDA, and the PAGA
18 Members will receive a payment regardless of whether they opt out.¹⁰ *Id.* at ¶ 53.

19 **E. Settlement Administration**

20 The Parties have agreed to use Simpluris Group, Inc. ("Simpluris") to administer the
21 Settlement, which has provided a capped quote of \$18,000 to administer this settlement.
22 Hicks Dec. at ¶ 20. Simpluris will distribute the Notice Package, calculate individual
23 settlement payments, calculate all applicable payroll taxes, withholdings and deductions,
24 prepare and issue all disbursements to be paid to CMs, the PAGA Members, the Class
25 Representative, Class Counsel, the LWDA, any applicable local, state, and federal tax

26 ⁸ Assuming no opt outs.

27 ⁹ Settlement at ¶ 58.

28 ¹⁰ An Aggrieved Employee cannot "opt out" of a PAGA settlement. See *Arias v. Superior Court*, 46 Cal.4th 969, 985 (2009) ("[T]he judgment in a [PAGA] action is binding not only on the named employee plaintiff but also on . . . any aggrieved employee not a party to the proceeding.").

1 authorities, and handle inquiries and/or disputes from CMs. Settlement Agreement at ¶¶ 57-
2 61. Simpluris is also responsible for the timely preparation and filing of all tax returns, and
3 payment of any and all necessary taxes and withholdings. *Id.* The Notice Package and
4 relevant documents will be available on a website established by the Settlement
5 Administrator for CMs to download as noted in the Notice.

6 **V. ARGUMENT**

7 **A. The Court Should Grant Preliminary Approval of the Settlement as to the** 8 **Class under Rule 23(b)(3).**

9 “Courts have long recognized that settlement class actions present unique due
10 process concerns for absent class members.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654
11 F.3d 935, 946 (9th Cir. 2011) (citation and internal quotations omitted). To protect the rights
12 of absent class members, Rule 23(e) of the Federal Rules of Civil Procedure requires that
13 the court approve all class action settlements “only after a hearing and on finding that it is
14 fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2); *In re Bluetooth*, 654 F.3d at 946.

15 Review of a proposed class action settlement ordinarily involves two hearings. See
16 Manual for Complex Litig. (4th) § 21.632. First, the court conducts a preliminary fairness
17 evaluation. If the court makes a preliminary determination on the fairness, reasonableness,
18 and adequacy of the settlement terms, the parties are directed to prepare the notice of
19 proposed settlement to the class members. *Id.* (noting that the certification hearing and
20 preliminary fairness evaluation can usually be combined). Second, the court holds a final
21 fairness hearing to approve or reject the settlement. *Id.*; see also *Narouz v. Charter*
22 *Commc’ns, Inc.*, 591 F.3d 1261, 1266–67 (9th Cir. 2010). The decision to approve a proposed
23 settlement is committed to the sound discretion of the court. See *Hanlon v. Chrysler Corp.*,
24 150 F.3d 1011, 1027 (9th Cir. 1998). Rule 23 requires that all class action settlements satisfy
25 two prerequisites before a court may grant certification for purposes of preliminary approval:
26 (1) that the settlement class meets the requirements for class certification if it has not yet
27 been certified (Fed. R. Civ. P. 23(a),(b); *Hanlon*, 150 F.3d at 1020); and (2) that the settlement
28 is fair, reasonable, and adequate (Fed. R. Civ. P. 23(e)(2)).

1 Though Rule 23 does not explicitly provide for such a procedure, federal courts
2 generally find preliminary approval of settlement and notice to the proposed class appropriate
3 if the proposed settlement “appears to be the product of serious, informed, non-collusive
4 negotiations, has no obvious deficiencies, does not improperly grant preferential treatment
5 to class representatives or segments of the class, and falls within the range of possible
6 approval.” *Lounibos v. Keypoint Gov’t Sols. Inc.*, No. 12-cv-00636-JST, 2014 WL 558675, at
7 *5 (N.D. Cal. Feb. 10, 2014) (quoting *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078,
8 1079 (N.D. Cal. 2007)); see also NEWBERG ON CLASS ACTIONS § 13:13 (5th ed. 2011);
9 *Dearaujo v. Regis Corp.*, Nos. 2:14-cv-01408-KJM-AC, 2:14-cv-01411-KJM-AC, 2016 WL
10 3549473 (E.D. Cal. June 30, 2016) (“Rule 23 provides no guidance, and actually foresees no
11 procedure, but federal courts have generally adopted [the process of preliminarily certifying
12 a settlement class].”). While it is not a court’s province to “reach any ultimate conclusions on
13 the contested issues of fact and law which underlie the merits of the dispute,” a court should
14 weigh the strength of a plaintiff’s case; the risk, expense, complexity, and likely duration of
15 further litigation; the extent of discovery completed; and the value of the settlement. *Chem.*
16 *Bank v. City of Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992); see also *Officers for Justice v.*
17 *Civil Serv. Comm’n of City & Cty. of S.F.*, 688 F.2d 615, 625 (9th Cir. 1982).

18 This class action settlement satisfies the requirements of Rule 23(a) and (b), and it is
19 fair, reasonable, and adequate in accordance with Rule 23(e)(2). Hicks Dec. at ¶ 21.
20 Accordingly, the Court should preliminarily approve the settlement.

21 **B. The Court Should Conditionally Certify the Class.**

22 A class may be certified under Rule 23 if (1) the class is so numerous that joinder of
23 all members individually is “impracticable”; (2) questions of law or fact are common to the
24 class; (3) the claims or defenses of the class representative are typical of the claims or
25 defenses of the class; and (4) the person representing the class can fairly and adequately
26 protect the interests of the class. Fed R. Civ. P. 23(a). Rule 23(b)(3) provides that a class
27 action seeking monetary relief may only be maintained if “the court finds that the questions
28 of law or fact common to class members predominate over any questions affecting only
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1 individual members, and that a class action is superior to other available methods for fairly
2 and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). The proposed
3 Settlement Class meets all of these requirements.

4 **1. The Class is Numerous and has Been Ascertained.**

5 The numerosity prerequisite demands that a class be large enough that joinder of all
6 members would be impracticable. Fed. R. Civ. P. 23(a)(1). The numerosity requirement
7 demands “examination of the specific facts of each case and imposes no absolute
8 limitations.” *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980). Courts have
9 found the requirement satisfied when the class comprises of as few as twenty members, or
10 where joining all class members would serve only to impose financial burdens and clog the
11 court’s docket. See *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 474 (E.D. Cal. 2010)
12 (citing *Jordan v. L.A. County*, 669 F.2d 1311, 1319 (9th Cir.), *vacated on other grounds*, 459
13 U.S. 810 (1982)) (discussing Ninth Circuit thresholds for numerosity); *Rannis v. Recchia*
14 (N.D. Cal. 2010) 380 Fed. Appx. 646, 650-651. (Class size of 20 satisfies numerosity
15 requirement). The 1,015 members of the Class satisfies the numerosity requirement. Hicks
16 Dec. at ¶ 22.

17 **2. Plaintiff’s Claims Raise Common Issues of Fact or Law.**

18 To satisfy the commonality requirement, the class representatives must demonstrate
19 that common points of facts and law will drive or resolve the litigation. *Wal-Mart Stores, Inc.*
20 *v. Dukes*, 564 U.S. 338, 350 (2011) (“What matters to class certification . . . is not the raising
21 of common ‘questions’—even in droves—but, rather the capacity of a classwide proceeding
22 to generate common answers apt to drive the resolution of the litigation.”) (internal citations
23 omitted).¹¹ The rule does not require all questions of law or fact to be common to every single
24 class member. See *Hanlon*, 150 F.3d at 1019 (commonality can be found through “[t]he
25 existence of shared legal issues with divergent factual predicates”). Rule 23(a)(2) has been
26 construed permissively. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011 (9th Cir. 1998). Plaintiff

27 ¹¹ See also *Lowe v. Popcornopolis LLC*, No. CV196984PSGRAOX, 2020 WL 5991509, at *3 (C.D. Cal. July 8,
28 2020); *Freeze v. PVH Corp.*, No. CV 19-1694 PSG (EX), 2020 WL 5769085, at *2 (C.D. Cal. July 1, 2020); *de*
Cabrera v. Swift Beef Co., No. EDCV182551PSGEX, 2020 WL 5356704, at *3 (C.D. Cal. June 25, 2020).
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1 “need not show that every question in the case, or even a preponderance of questions, is
2 capable of classwide resolution . . . a single common question” satisfies commonality. *Wang*
3 *v. Chinese Daily News, Inc.*, 737 F.3d 538 (9th Cir. 2013).

4 Here, there is only one relevant question: whether an employee had to pay BOFA a
5 check cashing fee on a paycheck from Defendant during the Class Period. Hicks Dec. at ¶
6 22. Based on the information provided by BOFA, that information has been obtained and the
7 class has been ascertained. The other question is whether a CM’s employment with
8 Defendant terminated such that the Labor Code’s Waiting Time Penalties provisions were
9 applicable (notably by any layoffs resulting from the COVID-19 pandemic). *Id.* Plaintiff
10 contends that these questions can be resolved at the same juncture, and thus the
11 commonality requirement is satisfied for the Class. *Id.*

12 **3. Plaintiff’s Claims are Typical of the Claims of the Class.**

13 “Rule 23(a)(3) requires that the claims of the named parties be typical of the claims of
14 the members of the class.” *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461, 468 (E.D. Pa. 2000).
15 “Under the rule’s permissive standards, a representative’s claims are ‘typical’ if they are
16 reasonably coextensive with those of absent class members; they need not be substantially
17 identical.” *Hanlon*, 150 F.3d at 1020. Here, Plaintiff’s claims are typical of those of all other
18 CMs, as she did not sign up for direct deposit and received physical paychecks, and when
19 she tried to cash those checks at BOFA, it assessed her check cashing fees for doing so,
20 and she no longer works for Defendant. Hicks Dec. at ¶ 23. Thus, this requirement is also
21 satisfied. *Id.*

22 **4. Plaintiff and Class Counsel will Adequately Represent the Class.**

23 To meet the adequacy of representation requirement in Fed R. Civ. P. 23(a)(4),
24 Plaintiffs must show “(1) that the putative named Plaintiffs have the ability and the incentive
25 to represent the claims of the class vigorously; (2) that they have obtained adequate counsel,
26 and (3) that there is no conflict between the individuals’ claims and those asserted on behalf
27 of the class.” *Fry*, 198 F.R.D. at 469. Plaintiff’s claims are not antagonistic to the claims of
28 CMs, but are in line with them. Hicks Dec. at ¶ 24. Plaintiff has prosecuted this case with the
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1 interests of the CMs in mind (and resolved her individual claims in a separate settlement).¹²
2 *Id.* Class Counsel has extensive experience in class action and employment litigation,
3 including wage and hour class actions, and do not have any conflict with the class. *Id.*

4 **5. The Rule 23(b)(3) Requirements for Class Certification are Met.**

5 Under Rule 23(b)(3), Plaintiff must demonstrate that common questions “predominate
6 over any questions affecting only individual members” and that a class action is “superior to
7 other available methods for fairly and efficiently adjudicating the controversy.” “The
8 predominance analysis under Rule 23(b)(3) focuses on ‘the relationship between the
9 common and individual issues’ in the case and ‘tests whether proposed classes are
10 sufficiently cohesive to warrant adjudication by representation.’” *Wang*, 737 F.3d at 545 (9th
11 Cir. 2013). Class actions in which a defendant’s uniform policies are challenged generally
12 satisfy the predominance requirement of Rule 23(b)(3). *See Palacios v. Penny Newman*
13 *Grain, Inc.*, 2015 WL 4078135, at *5–6 (E.D. Cal. July 6, 2015); *see also Lowe, supra*, 2020
14 WL 5991509, at *4; *Freeze, supra*, 2020 WL 5769085, at *3; *de Cabrera, supra*, 2020 WL
15 5356704, at *4-5.

16 Here, Plaintiff contends the common questions raised in this action are ideally suited
17 for class treatment: whether the check cashing fees violate Labor Code § 212, whether those
18 fees constitute unpaid wages triggering the waiting time penalties provisions of the Labor
19 Code, and whether employees can be (as defendant alleges) considered “employed”
20 indefinitely absent an affirmative termination. Hicks Dec. at ¶ 25. There are no individualized
21 questions. As a result, resolution of these claims could be resolved through the common
22 forms of proof used to value the case for mediation, including the BOFA check cashing fee
23 data, and Defendant’s records of to whom it issued a physical paycheck during the Class
24 Period. *Id.*

25 Further, Plaintiff contends that the class action mechanism is a superior method of
26 adjudication compared to a multitude of individual suits. Hicks Dec. at ¶ 26. In resolving the

27 ¹² Plaintiff’s individual claims were negotiated separately from and after the Class/PAGA claims, and the
28 payment for the individual release was not condition on the Court’s approval of this settlement, and has already
been made. *Id.*

1 Rule 23(b)(3) superiority inquiry, “the court should consider class members’ interests in
2 pursuing separate actions individually, any litigation already in progress involving the same
3 controversy, the desirability of concentrating in one forum, and potential difficulties in
4 managing the class action—although the last two considerations are not relevant in the
5 settlement context.” See *Palacios*, 2015 WL 4078135, at *6 (citing *Schiller v. David’s Bridal*
6 *Inc.*, No. 10-0616, 2012 WL 2117001, at *10 (E.D. Cal. June 11, 2012)).¹³ Here, the CMs do
7 not have a strong interest in controlling their individual claims for check cashing fees of \$5 or
8 \$8 per occurrence, nor is it likely any individual CM would be able to obtain representation
9 for an individual action. Hicks Dec. at ¶ 26. If the CMs proceeded on these claims as
10 individuals, their many individual suits would require duplicative discovery and litigation in
11 potentially dozens of individual lawsuits. *Id.* In contrast, the class action mechanism would
12 efficiently resolve numerous substantially identical claims at the same time while avoiding a
13 waste of judicial resources and eliminating the possibility of conflicting decisions. *Id.*
14 Manageability is not a concern in the settlement context, *Amchem Prod., Inc. v. Windsor*, 521
15 U.S. 591, 593 (1997). Accordingly, class treatment is superior.

16 **C. The Settlement Should Be Preliminarily Approved as to the Class**
17 **Because It Is Fair, Reasonable, and Adequate.**

18 In deciding whether to approve a proposed class action settlement, the Court must
19 find that the proposed settlement is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2);
20 *Bluetooth*, 654 F.3d at 946. “[P]reliminary approval of a settlement has both a procedural and
21 substantive component.” See, e.g., *In re Tableware Antitrust Litigation*, 484 F. Supp. 2d at
22 1079 (citing *Schwartz v. Dallas Cowboys Football Club, Ltd.*, 157 F. Supp. 2d 561, 570 n.12
23 (E.D. Pa. 2001)). Preliminary approval is appropriate if “the proposed settlement appears to
24 be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies,
25

26 ¹³ See also *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978) (“Numerous individual
27 actions would be expensive and time-consuming and would create the danger of conflicting decisions as to
28 persons similarly situated.”). CMs could face difficulty finding legal representation and could lose the incentive
to bring their claims in isolation. See *In re Napster, Inc. Copyright Litig.*, No. C 04-1671 MHP, 2005 WL 1287611,
at *8 (N.D. Cal. June 1, 2005) (finding superiority in part because many class members would individually lack
the time, resources, and legal sophistication to enforce their rights).

1 does not improperly grant preferential treatment to class representatives or segments of the
2 class, and falls within the range of possible approval.” *Ma v. Covidien Holding, Inc.*, No. SACV
3 12-2161 DOC, 2014 WL 360196, at *4 (C.D. Cal. Jan. 31, 2014); see also *Eddings v. Health*
4 *Net, Inc.*, No. CV 10-1744 JST (RZx), 2013 WL 169895, at *2 (C.D. Cal. Jan. 16, 2013).
5 Importantly, courts apply a presumption of fairness “if the settlement is recommended by
6 class counsel after arm’s-length bargaining.” *Wren v. RGIS Inventory Specialists*, No. C-06-
7 05778 JCS, 2011 WL 1230826, at *6 (N.D. Cal. Apr. 1, 2011).

8 **1. Procedural Fairness.**

9 A settlement is presumed fair if it “follow[s] sufficient discovery and genuine arms-
10 length negotiation.” *Adoma v. Univ. of Phx., Inc.*, 913 F. Supp. 2d 964, 977 (E.D. Cal. 2012)
11 (quoting *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal.
12 2004)). There is also “a strong judicial policy that favors settlements, particularly where
13 complex class action litigation is concerned.” *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101
14 (9th Cir. 2008). In light of these factors, the proposed settlement is fair, reasonable, and
15 adequate.

16 As noted above, in June 2021, the Parties attended mediation with Deborah Crandall
17 Saxe, who specializes in resolving wage and hour class action matters. Hicks Dec. at ¶ 27.
18 During the mediation, the Parties engaged in good-faith, non-collusive negotiations. *Id.* The
19 Parties exchanged information regarding Defendant’s realistic exposure to damages, the
20 relative strengths and weaknesses of Plaintiff’s claims, the risks and delays of further
21 litigation, the current state of the law as it related to Plaintiff’s claims, and the difficulty Plaintiff
22 may have in obtaining and maintaining class certification on each of her claims. *Id.* Moreover,
23 Plaintiff’s counsel conducted a thorough investigation into the merits of the claims, and the
24 parties examined the check cashing fee data provided by BOFA. Plaintiff also conducted
25 detailed phone interviews with CMs. *Id.* at ¶¶ 6-8, 27. The Parties’ negotiation constituted
26 genuine, informed, arm’s length bargaining.

1 **2. Substantive Fairness.**

2 In evaluating the fairness of a proposed settlement, courts compare the settlement
3 amount with the estimated maximum damages recoverable in a successful litigation. *In re*
4 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir.2000). Courts routinely approve
5 settlements that provide a fraction of the maximum potential recovery. *See, e.g., Officers for*
6 *Justice v. Civil Serv. Comm’n of San Francisco*, 688 F.2d 615, 623 (9th Cir. 1982).¹⁴ “It is
7 well-settled law that a cash settlement amounting to only a fraction of the potential recovery
8 does not per se render the settlement inadequate or unfair.” *In re Mego*, 213 F.3d at 459; *see*
9 *also Rigo v. Kason Indus., Inc.*, No. CV 11-0064 MMA (DHBx), 2013 WL 3761400, at *5 (S.D.
10 Cal. July 16, 2013) (“[D]istrict courts have found that settlements for substantially less than
11 the plaintiff’s claimed damages were fair and reasonable, especially when taking into account
12 the uncertainties involved with the litigation.”). To determine whether a settlement “falls within
13 the range of possible approval” a court must focus on “substantive fairness and adequacy,”
14 and “consider plaintiffs’ expected recovery balanced against the value of the settlement
15 offer.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1080 (N.D. Cal. 2007).

16 A review of the Settlement Agreement reveals the fairness, reasonableness, and
17 adequacy of its terms. Hicks Dec. at ¶ 28. The Total Net Settlement Fund to be paid to CMs
18 of \$221,500, derived from a Gross Settlement Amount of \$500,000.00, will result in fair and
19 just relief to CMs. *Id.* Payments to the Class members are roughly 2% of the total non-PAGA
20 damages and penalties attainable in this case (but well over 7 times the amount of check
21 cashing fees (\$30,759.00) that CMs were actually assessed, and the PAGA disbursement
22 amount of \$75,000 is roughly 2% of the PAGA damages, which are based on alleged
23 violations suffered by employees who were issued a physical paycheck *even if they were not*
24 *(but could have been) assessed any fee by BofA for cashing the check.*¹⁵ *Id.* The result is

25

¹⁴ *In Re Sunrise Secs. Litig.*, 131 F.R.D. 450, 457 (E.D. Pa. 1990) (approving 20% of damages); *In Re Armored*
26 *Car Antitrust Litig.*, 472 F.Supp. 1357, 1373 (N.D. Ga.1979) (settlements with a value of 1% to 8% of the
27 estimated total damages were approved); *Entin v. Barg*, 412 F.Supp. 508, 514 (E.D. Pa. 1976) (approving 17%
28 of damages); *In Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of
29 damages).

¹⁵ The allocation for PAGA penalties falls within the range of reasonableness previously approved by courts in
this Circuit. *See, e.g., In re M.L. Stern Overtime Litig.*, No. CV 07-0118 BTM (JMAx), 2009 WL 995864, at *1
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1 well within the reasonable standard when considering the difficulty and risks presented by
2 pursuing further litigation. *Id.* The final settlement amount takes into account the substantial
3 risks inherent in any class action wage-and-hour case, as well as the specific defenses
4 asserted by Defendant, including that its Collective Bargaining Agreement with CMs means
5 that they are permanently employed absent an affirmative termination, since they remain able
6 to accept a job from Freeman at any time (indeed, Defendant argued that Plaintiff could take
7 a job with Defendant at any time even though she had not actually performed any work for
8 them in roughly two years). *Id.* See *Officers for Justice*, 688 F.2d at 623. Despite the modest
9 settlement amount, the Settlement confers a substantial benefit on CMs who faced the
10 significant risk of no recovery and ongoing litigation expenses if they filed their own lawsuit,
11 if they could retain their own counsel to do so. Given that “the risk of continued litigation
12 balanced against the certainty and immediacy of recovery from the Settlement” is a relevant
13 factor, *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 489 (E.D. Cal. 2010) (*citing In*
14 *re Mego*, 213 F.3d at 458), this reality also supports preliminary approval.

15 **3. The Distribution of Settlement Proceeds is Tailored to the Class**
16 **and Their Respective Claims.**

17 In an effort to further ensure fairness for the employees, the Parties have agreed to
18 allocate the settlement proceeds amongst CMs equally, as the alleged waiting time penalties
19 alleged vastly exceed the \$30,759 in total check cashing fees assessed against the CMs.
20 Hicks Dec. at ¶ 29. Similarly, the PAGA allocation will be done equally because if it is not,
21 then some of the awards will be less than the postage required to send them, and because
22 the PAGA Members were by and large not actually assessed any check cashing fees (which
23 are dealt with in the Class Settlement). The allocation was made based on Class Counsel’s
24 assessment of the risk of continued litigation and risk on certification and merits. *Id.*

25
26 (S.D. Cal. Apr. 13, 2009) (approving PAGA settlement of 2 percent); *Hopson v. Hanesbrands, Inc.*, No. CV 08-
27 0844 EDL, 2008 WL 3385452, at *1 (S.D. Cal. Apr. 13, 2009) (approving a PAGA settlement of 0.3 percent);
28 see also *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC (E.D. Cal. June 29, 2016), 2016 WL 3549473 at
*3 (\$1.95 million settlement allocating \$10,000 to PAGA penalties); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-
CV-0324 AWI SKO (E.D. Cal. Oct. 31, 2012), 2012 WL 5364575 at *7 (\$3.9 million settlement allocating
\$10,000 to PAGA penalties)).

1 A class action settlement need not benefit all class members equally. *Holmes v.*
2 *Continental Can Co.*, 706 F.2d 1144, 1148 (11th Cir.1983); *In re AT & T Mobility Wireless*
3 *Data Services Sales Tax Litigation*, 789 F.Supp.2d 935, 979–80, 2011 WL 2204584 at *42
4 (N.D.Ill. 2011). Rather, although disparities in the treatment of class and collective members
5 may raise an inference of unfairness and/or inadequate representation, this inference can be
6 rebutted by showing that the unequal allocations are based on legitimate considerations.
7 *Holmes*, 706 F.2d at 1148; *In re AT&T*, 789 F.Supp.2d at 979–80. Here, the only
8 consideration is whether a CM was actually assessed a check cashing fee during the Class
9 Period.

10 **4. The Informal Discovery Exchange Enabled the Parties to Make**
11 **Informed Settlement Decisions.**

12 The amount of discovery completed prior to reaching a settlement is important
13 because it bears on whether the Parties and the Court have sufficient information before
14 them to assess the merits of the claims. See, e.g., *Lewis v. Starbucks Corp.*, No. 2:07-cv-
15 00490-MCE-DAD, 2008 WL 4196690, at *6 (E.D. Cal. Sept. 11, 2008); *Boyd v. Bechtel Corp.*,
16 485 F.Supp. 610, 617 (N.D. Cal. 1979). Informal discovery is a strong factor in favor of
17 settlement approval so long as the Parties had an opportunity to “form a clear view of the
18 strengths and weaknesses of their cases.” *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D.
19 443, 454 (E.D. Cal. 2013).

20 The Parties engaged in an exchange of informal discovery to enable both sides to
21 assess the claims and potential defenses. Hicks Dec. at ¶¶ 6-8, 27, 30. The Parties accurately
22 assessed the legal and factual issues that would arise if the case proceeded to trial. *Id.* at ¶
23 28. In addition, in reaching this Settlement, Class Counsel relied on their substantial litigation
24 experience in similar wage and hour class and collective actions. *Id.* Class Counsel’s liability
25 and damages evaluation was premised on a careful and extensive analysis of actual check
26 cashing fee data made available by BOFA. *Id.* Ultimately, facilitated by Mediator Saxe, the
27 Parties used this information and discovery to fairly resolve the litigation. *Id.*

1 **5. Litigating the Action Not Only Would Delay Recovery, But Would**
2 **Be Expensive, Time Consuming, and Involve Substantial Risk.**

3 The total monetary value of the proposed Settlement represents a fair compromise
4 given risks and uncertainties posed by continued litigation. Hicks Dec. at ¶ 31. If this case
5 were to go to trial as a class action, Class Counsel estimates that fees and costs would
6 exceed \$1,000,000.00. *Id.* Litigating the class and collective claims would require substantial
7 additional discovery, including depositions of experts, the presentation of percipient and
8 expert witnesses at trial, as well as the consideration, preparation, and presentation of
9 voluminous documentary and expert evidence. *Id.* Recovery of the full exposure previously
10 referenced would also require complete success and certification of all of Plaintiff's claims, a
11 questionable feat in light of Defendant's arguments regarding the Waiting Time Penalties
12 claims, including that the fees are not unpaid wages, and that its CBA requires the conclusion
13 that absent an affirmative termination, CMs remain employed by it. *Id.* Furthermore, were this
14 matter not to settle, Defendant would likely be able to engage in a *Pick-Up Stix* PCM release
15 campaign for minimal consideration given the \$5 or \$8 check cashing fees actually assessed
16 against the CMs. In contrast, resolving this case by means of a global settlement will yield a
17 prompt, certain, and substantial recovery for the CMs (an average payment of at least \$218
18 for check cashing fees of \$5 or \$8—the equivalent of over 43 \$5 check cashing fees and 27
19 \$8 fees—and totaling under \$31,000 for the entire class). *Id.* Such a result will benefit the
20 Parties and the court system. *Id.*

21 **6. The Class Representative Award is Reasonable.**

22 Named Plaintiffs in class action litigation are eligible for reasonable service awards.
23 *See Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003).¹⁶ The enhancement payment
24 of \$10,000 for Plaintiff is intended “to compensate class representatives for work done on
25 behalf of the class, to make up for financial or reputational risk undertaken in bringing the
26

27 ¹⁶ “Courts routinely approve incentive awards to compensate named Plaintiffs for the services they provided
28 and the risks they incurred during the course of the class action litigation.” *Van Vranken v. Atl. Richfield Co.*,
901 F. Supp. 294, 300 (N.D. Cal. 1995) (named Plaintiff received \$50,000 for work in class action); *Castellanos*
v. Mousai v. E-Loan, Inc., No. C 06-01993 SI (N.D. Cal. May 30, 2007) (approving service award of \$20,000).
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1 action, and, sometimes, to recognize their willingness to act as a private attorney general.”
2 *Rodriguez v. West Publ’g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009).

3 Here, Plaintiff has requested an incentive payment of \$10,000. This would represent
4 approximately 2% of the overall settlement. The average payment a member of the Class will
5 receive is approximately \$218.23. Settlement at ¶ 26; Hicks Dec. at ¶ 31.

6 This proposed award is “not outside the realm of what has been approved as
7 reasonable by other courts” in this Circuit. *Aguilar v. Wawona Frozen Foods*, No. 1:15-cv-
8 00093-DAD-EPG, 2017 WL 2214936, at *8 (E.D. Cal. May 19, 2017) (approving an incentive
9 award of \$7,500 to each class representative where average class recovery was
10 approximately \$500); *see also Davis v. Brown Shoe Co., Inc.*, No. 1:13-cv-01211-LJO-BAM,
11 2015 WL 6697929, at *12 (E.D. Cal. Nov. 3, 2015) (approving \$7,000 incentive award where
12 average class recovery was approximately \$400). Further, courts typically examine the
13 propriety of an incentive award by comparing it to the total amount other class members will
14 receive. *See Staton*, 327 F.3d at 975. Moreover, in this case Plaintiff estimates that she has
15 spent well over a hundred hours performing work related to this case, and will submit a
16 declaration at the Final Approval stage testifying to her time spent on the case. Hicks Dec. at
17 ¶ 49. Finally, Plaintiff executed a general release of *all* claims against Defendant.

18 **7. The Requested Attorneys’ Fees and Costs are Reasonable.**

19 In their fee motion to be submitted at final approval, Class Counsel will request up to
20 thirty-three percent (33%) of the Gross Settlement Amount, \$166,666.67 plus reimbursement
21 of costs, which are currently estimated to be just over \$10,000. Hicks Dec. at ¶ 50. The typical
22 range of acceptable attorneys’ fees in the Ninth Circuit is 20% to 33.33% of the total
23 settlement value, with 25% considered the benchmark. *Vasquez v. Coast Valley Roofing*,
24 266 F.R.D. 482, 491-492 (E.D. Cal. 2010) (citing *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th
25 Cir. 2000)); *Hanlon*, 150 F.3d at 1029; *Staton*, 327 F.3d at 952. However, the exact
26 percentage varies depending on the facts of the case, and in “most common fund cases, the
27 award exceeds that benchmark.” *Id.* (citing *Knight v. Red Door Salons, Inc.*, 2009 WL 248367
28 (N.D. Cal. 2009); *In re Activision Sec. Litig.*, 723 F.Supp. 1373 (N.D. Cal. 1989) (“nearly all
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1 common fund awards range around 30%")). In California, courts have customarily approved
2 payments of attorneys' fees amounting to one-third of the common fund in comparable wage
3 and hour class actions. See *Ellmore v. Ditech Funding Corp.*, No. SAVC 01-0093 (C.D. Cal.,
4 Sept. 12, 2002) (approving award of attorneys' fees of 33% of the recovery).¹⁷

5 In this case, given the results achieved, the effort expended litigating these claims,
6 and the difficulties attendant to litigating the case in the face of changing law, such an upward
7 adjustment is warranted. Hicks Dec. at ¶ 50. There was no guarantee of compensation or
8 reimbursement. *Id.* Rather, counsel undertook all the risks of this litigation on a completely
9 contingent fee basis. *Id.* Defendant's vigorous and skillful defense further confronted Class
10 Counsel with the prospect of recovering nothing or close to nothing for their commitment to
11 and investment in the case. *Id.*

12 Nevertheless, Plaintiff and Class Counsel committed themselves to developing and
13 pressing Plaintiff's claims to enforce the employees' rights and maximize the class recovery.
14 *Id.* During the litigation, Counsel turned away other less risky cases to remain sufficiently
15 resourced for this one. *Id.* The challenges that Class Counsel had to confront and the risks
16 they had to fully absorb on behalf of the class here are precisely the reasons for multipliers
17 in contingency fee cases. See, e.g., *Noyes v. Kelly Servs., Inc.*, 2:02-CV-2685-GEB-CMK,
18 2008 WL 3154681 (E.D. Cal. Aug. 4, 2008); Posner, *Economic Analysis of the Law*, 534, 567
19 (4th ed. 1992) ("A contingent fee must be higher than a fee for the same legal services paid
20 as they are performed... because the risk of default (the loss of the case, which cancels the
21 debt of the client to the lawyer) is much higher than that of conventional loans").

22 Attorneys who litigate on a contingent basis expect to receive significantly higher
23 effective hourly rates in cases where compensation is contingent on success, particularly in

24 ¹⁷ *Regino Primitivo Gomez, et al. v. H&R Gunlund Ranches, Inc.*, No. CV F 10-1163 LJO MJS, 2011 WL
25 5884224 (E.D. Cal. 2011) (approving attorneys' fees award equal to 45% of the settlement fund). *Wren v. RGIS*
26 *Inventory Specialists*, 2011 WL 1230826, (N.D. Cal., 2011) (approving attorneys' fee award of just under 42% of
27 common fund); *Big Lots Overtime Cases*, JCC Proceeding No. 4283 (San Bernardino Super. Ct., Feb. 4, 2004)
28 (approving award of attorneys' fees of 33% of the recovery); *Barela v. Ralph's Grocery Co.*, No. BC070061 (Los
Angeles Super. Ct., June 5, 1998) (same); *Davis v. The Money Store, Inc.*, No. 99AS01716, (Sacramento
Super. Ct., Dec. 26, 2000) (same); *Miskell v. Auto. Club of S. Cal.* (Orange County Super. Ct., No. 01CC09035,
May 27, 2003) (same); *Sconce/Lamb Cremation Cases*, JCC Proceeding No. 2085, (Los Angeles Super. Ct.,
Mar. 24, 1992) (same).

1 hard-fought cases where, like in the case at bar, the result is uncertain. This does not result
2 in any windfall. In the legal marketplace, a lawyer who assumes a significant financial risk on
3 behalf of a client rightfully expects that his or her compensation will be significantly greater
4 than if no risk was involved (*i.e.*, if the client paid the bill on a monthly basis), and that the
5 greater the risk, the greater the “enhancement.” Adjusting court-awarded fees upward in
6 contingent fee cases to reflect the risk of recovering no compensation whatsoever for
7 hundreds of hours of labor simply makes those fee awards consistent with the legal
8 marketplace, and helps to ensure that meritorious cases will be brought to enforce important
9 public interest policies and that clients who have meritorious claims will be better able to
10 obtain qualified counsel.

11 The requested attorneys’ fees and expense award is also reasonable when compared
12 to Class Counsel’s lodestar. Hicks Dec. at ¶ 51. *See, e.g., Vizcaino v. Microsoft Corp.*, 290
13 F. 3d 1043, 1050-51 (9th Cir. 2002) (“Calculation of the lodestar, which measures the lawyers’
14 investment of time in the litigation, provides a check on the reasonableness of the percentage
15 award”). Here, Class Counsel’s current lodestar is well over \$175,000,000, more than the
16 fees requested resulting in a negative multiplier. Hicks Dec. at ¶ 51. This amount will increase
17 for preparation of the final approval papers and any remaining hearings, correspondence and
18 communications with CMs, and settlement administration and oversight. *Id.* Class Counsel’s
19 costs will remain low and necessary to the prosecution of the case and approval of this
20 Settlement Agreement. *Id.* Class Counsel also requests reimbursement for these expenses.
21 *Id.* Class Counsel respectfully submits that a one-third recovery for fees is appropriate and
22 should be preliminarily approved. *Id.*

23 **8. Release of Claims**

24 Finally, the release appropriately tracks the claims at issue in this case. Settlement at
25 ¶ 25. The Settlement provides that all participating CMs shall be deemed to have forever
26 released and dismissed with prejudice all released claims as defined in the Agreement that
27 could have been alleged based on the facts alleged in the Action, and that accrued during
28 the Class Period.

1 **D. The Proposed Notice Process is Reasonable.**

2 The Court must ensure that CMs receive the best notice practicable under the
3 circumstances of the case.¹⁸ See *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12
4 (1985); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974). Procedural due process
5 requires only notice reasonably calculated “to apprise interested parties of the pendency of
6 the action and afford them an opportunity to present their objections.” *Mullane v. Cent.*
7 *Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *Silber v. Mabon*, 18 F.3d 1449, 1454
8 (9th Cir. 1994). A settlement notice “is satisfactory if it ‘generally describes the terms of the
9 settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come
10 forward and be heard.’” *Churchill Village LLC*, 361 F.3d at 575.

11 The Class Notices (Exs. A1 and A2 to the Settlement, intended for CMs who are/are
12 not also PAGA Members, respectively) and manner of distribution is “the best notice
13 practicable.” Settlement at ¶¶ 48-50; Fed. R. Civ. P. 23(c)(2)(B). All CMs have been identified
14 and the Notice Package will be mailed directly to each CM. *Id.* at ¶ 48. In addition, the
15 proposed Notice is clear and straightforward, and provides information on the meaning and
16 nature of the Class definition, the class action, the terms and provisions of the Settlement
17 Agreement, and the monetary awards that the Settlement will provide CMs. Hicks Dec. at ¶¶
18 52-58.

19 The proposed Notice also fulfills the requirement of neutrality in class notices. See
20 Conte, Newberg on Class Actions, § 8.39 (3rd Ed. 1992). It summarizes the proceedings
21 necessary to provide context for the Settlement Agreement and the terms and conditions of
22 the settlement, including an explanation of how the settlement amount will be allocated
23 between the named Plaintiff, Class Counsel, the Settlement Administrator, and the CMs, all
24 in compliance with the Manual for Complex Litigation’s recommendation that “the notice
25 contain a clear, accurate description of the terms of the settlement.” Manual for Complex
26 Litigation, *Settlement Notice*, § 21.312 (4th ed. 2004).

27
28 ¹⁸ There is no requirement for the PAGA Members, but the parties have agreed nevertheless to provide a
cover letter accompanying the PAGA Payments to PAGA Members.

1 The Notice clearly explains the procedures and deadlines for requesting exclusion,
2 objecting to the estimated award, the consequences of taking or foregoing the various options
3 available to CMs, and the date, time and place of the final approval hearing. Pursuant to Rule
4 23(h), the proposed Notice also sets forth the amount of attorneys' fees sought by Plaintiff,
5 as well as an explanation of the procedure by which Class Counsel will apply for them. See
6 Ex. 1 to Settlement. In addition, the Notice explains that CMs have the opportunity to object
7 to Class Counsel's motion for attorneys' fees and costs. *Id.* It makes clear that the final
8 settlement approval decision has yet to be made. *Id.* Accordingly, the Notice complies with
9 the standards of fairness, completeness, and neutrality required of a settlement class notice
10 disseminated under authority of the Court. See Conte, Newberg on Class Actions, §§ 8.21
11 and 8.39 (3rd Ed. 1992); Manual for Complex Litigation, *Certification Notice*, § 21.311;
12 *Settlement Notice*, § 21.312 (4th ed. 2004).

13 Furthermore, reasonable steps will be taken to ensure that all CMs (and the PAGA
14 Members) receive the Notices. Before mailing, Defendant shall provide to Simpluris the last-
15 known name, Social Security number, and their last-known address. Settlement at ¶¶ 4, 9,
16 49. The Settlement Administrator shall use one or more commercially reasonable skip tracing
17 methods to update the contact information in the Database. *Id.* at ¶ 49. Simpluris will then
18 mail the Notice to each CM. *Id.* With respect to Notices returned as undeliverable, Simpluris
19 will promptly attempt to obtain a valid mailing address by use of one or more skip trace
20 databases such as the Equifax, National Change of Address ("NCOA") database search, and
21 skip trace. *Id.* at ¶ 49. If another address is identified, Simpluris will send the Notice to the
22 new address. *Id.* Any CM who fails to submit a timely request to exclude themselves from the
23 Settlement will be deemed a Class member whose rights and claims are determined by any
24 order the Court enters granting final approval, and any judgment the Court ultimately enters
25 in the case. *Id.* at ¶ 54.

26 The proposed Notice clearly and concisely describes the terms of the Settlement and
27 the obligations of CMs who participate, will be disseminated in a way calculated to provide
28 notice to as many CMs as possible, and thus should be preliminarily approved.

1 **VI. CONCLUSION**

2 For the foregoing reasons, Plaintiff respectfully requests that this Court grant
3 preliminary approval of the Settlement Agreement in accordance with the schedule set forth
4 herein, and set a Final Approval Hearing approximately 120 days from the date of Preliminary
5 Approval in order to complete the notice process. See Hicks Dec. at ¶ 58.

6
7 Respectfully submitted,

8
9 Date: December 27, 2021

HOYER & HICKS

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